STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 8, 2004 **Agenda ID #3640**

TO: PARTIES OF RECORD IN RULEMAKING 02-01-011

Enclosed is the draft decision of Administrative Law Judge Pulsifer. The decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ PULSIFER (Mailed 6/8/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 2, 2002)

OPINION DENYING PETITIONS TO MODIFY DECISIONS (D.) 03-04-057 and D.02-03-055

TABLE OF CONTENTS

OPINION DENYING PETITIONS TO MODIFY DECISIONS (D.) 03-04-057 and D.02-03-055

By this decision, we resolve two related pleadings: (1) the Petition to Modify D.03-04-057[1] and the Petition for Clarification of D.02-03-055.[2] We deny both petitions, but provide opportunity for further comment regarding an alternative solution to the problems posed by parties' pleadings.

I. Discussion

A. Positions of Joint Petitioners

A joint petition to modify D.03-04-057 was filed on August 1, 2003 by SBC Services (SBC), University of California/California State University (UC/CSU), and California Large Energy Consumers Association (CLECA) (Joint Petitioners). The Petition was filed to prevent Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) (*i.e.*, "utility distribution companies [UDCs]) from implementing a new policy which Petitioners claim would require pre-suspension direct access (DA) customers to install a second meter and establish a second, bundled account in the ordinary course of business whenever a meter change is required. Joint Petitioners believe this new requirement is based on an untenable interpretation of D.03-04-057, a decision establishing certain ground rules when customers want to move DA accounts.

---

[1] D.03-04-057 granted the Petition to Modify D.02-03-055 filed by Albertson's Inc. to allow DA customers to add new locations or accounts to DA service provided there is no net increase in the amount of load served under DA as of September 20, 2001.

[2] D.02-03-055 set forth the Commission's policies concerning suspension of DA based on a September 20, 2001 suspension date.

Thus, Petitioners ask that the Commission modify D.03-04-057 to affirm that second meters and second, bundled accounts are not required when meters are changed. Moreover, because of the expense, increased operational complexity, failure risk associated with increased operational complexity, and disruption caused by this policy, Petitioners ask that the Commission act expeditiously. Pursuant to Rule 47, Joint Petitioners specifically request that D.03-04-057 be modified by changing the requirements of Rule 6 (in Appendix A, p. 2) as follows:

> Rule 6 should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers, <u>including meter changes and upgrades caused by normal increases in load at pre-suspension accounts</u>. (Proposed text additions underlined.)

The Joint Petitioners argue that the UDCs erroneously base their proposed two-account, two-meter policy on language in D.03-04-057 regarding "no net increase in DA load." The Joint Petitioners argue this language was adopted by the Commission merely to ensure that the ability to move the location of DA-eligible accounts would not result in gaming the suspension order (*i.e.,* D.02-03-055), but that the issue of normal load changes, at stationary accounts was simply not before the Commission in D.03-04-057. Joint Petitioners believe their requested modification to Rule 6 will prevent the UDCs from implementing the two-meter, two-account policy for normal increases in load.

The economic and administrative disruption caused by the two-meter, two-account policy as identified by the Joint Petitioners fall into two categories: (1) expense; and (2) increased operating complexity and inefficiencies.

Joint Petitioners cite examples of the costs and disruptions that a two-meter, two-account policy would have on the UC/CSU system. As discussed in the declaration of Len Pettis, both UC/CSU, the systems are adding significant new facilities to existing campuses over the next decade to meet mandated enrollment growth. (Pettis Decl.¶ 3.) Typically, these facilities are infill buildings that are not proximate to a campus' main service connection point. The campuses typically own the distribution system within the campus boundaries that supplies electricity to individual campus facilities. The normal practice of the campuses would be to serve these new facilities through the campus-owned distribution systems. Joint Petitioners claim the UDCs' policy would require that a campus install not only a separate meter but a separate feed to new facilities that would likely cost millions of dollars for each new facility.

For SBC, as claimed in the declaration of John Keller, more than 15% of SBC's DA loads will require a second meter this year. (Keller Decl., ¶ 9.) The additional energy costs to SBC will be $3.6 million annually, which represents only the additional energy charges from the second account not being billed as DA service. Keller claims the SBC hardware and installation costs for the second meter and panel will increase by approximately $460,000 for the work scheduled for 2003.

In addition, the second meter proposal will require a second House Service Panel (HSP) to keep the two systems separate, as well as additional equipment, which will cost from $50,000 to $300,000 per project.

B. Position of SCE

SCE opposes the Petition to Modify D.03-04-057.[3] SCE denies Joint Petitioners' claim that SCE relied on the "no net increase in DA load" language in D.03-04-057 to implement its procedures for increases in DA load. SCE argues that its procedures are intended to implement the Commission's "standstill approach" to DA load and to prevent "add-ons of new DA load," as promulgated in D.02-03-055, prior to D.03-04-057.

SCE also denies Joint Petitioners' claim that SCE is "taking the position that routine meter changes can trigger the loss of DA service" and that SCE is requiring DA customers to install a second bundled account "whenever a meter change is required." (Jt. Petition, p. 1.) SCE argues that it has implemented procedures to respond to requests by DA customers to "significantly increase" DA load, which may or may not require a meter change.[4] In fact, SCE believes existing metering for most large customers, is adequate for the increased load.

---

[3] SCE filed its response in opposition to the Joint Parties' Petition on September 2, 2003. SCE also filed a third-round reply in support of its own Petition for Clarification on September 15, 2003. The Joint Petitioners, on September 18, 2003, filed a motion to strike the third-round reply, arguing that SCE failed to obtain advance permission and that the reply improperly challenged the "standstill principle." SCE filed a response to the Joint Motion to strike on September 25, 2003. SCE argues that its failure to obtain advance permission was inadvertent, and no party is prejudiced thereby. SCE denies that it is challenging the "standstill principle." The motion to strike the third-round reply is denied. SCE should have asked for permission in advance pursuant to Rule 47(g), although SCE did belatedly seek permission after the fact to file the third-round reply. Its receipt will not prejudice any party. Permission to receive the third-round response is granted.

[4] SCE's proposed implementation procedures are discussed in the following section of this order relating to SCE's Petition for "clarification" of D.02-03-055.

SCE does not agree with the Joint Petitioners' conclusion that the Commission limited its prohibition of new DA load to only new accounts. SCE argues that the Commission's "standstill approach" was intended to prohibit growth in DA load, and that the term "add-ons of new load" clearly contemplates adding load to an existing DA account, not solely opening a new account. SCE argues that allowing DA accounts to add-on new load without limitation would be a giant loophole in the Commission's "standstill approach" and would render the entire approach meaningless.

As a related matter, SCE filed on August 4, 2003, a Petition for Expedited Clarification of D.02-03-055." SCE seeks clarification from the Commission regarding the appropriate procedures for implementing the "standstill approach" adopted in D.02-03-055 in connection with requests received from DA customers to increase their DA load. SCE seeks the Commission's approval of its proposed procedures to respond to such requests. SCE seeks timely resolution of this issue to minimize potential future costs increases to DA customers if it becomes necessary for them to reconfigure their electric facilities to separate their existing DA load from any significant incremental load.

Pursuant to Assembly Bill (AB) 1X (Cal. Water Code, Section 80110), which requires that "the right of retail end users to acquire service from other providers shall be suspended until the department [DWR] no longer supplies power hereunder," the Commission issued a series of decisions implementing DA suspension. On September 20, 2001, the Commission issued D.01-09-060, suspending the right of customers to acquire DA service on or after September 21, 2001. Subsequently, the Commission issued D.02-03-055, which confirmed the September 21, 2001 suspension date and articulated a general

"standstill approach" which enabled current DA customers to preserve their DA service while assuring that overall DA load would not increase.

Under the Commission's "standstill approach," DA load is not permitted to grow, "apart from normal load fluctuations." However, in attempting to implement the "standstill policy," SCE argues that it is difficult to differentiate "normal load fluctuations" (due to factors such as weather changes or seasonal businesses) from the "addition of new load" (due to factors such as the addition of new equipment). Therefore, SCE is proposing to use an objective criterion (500 kilowatt (kW) or 10% threshold) that it believes is large enough that it will not be confused with a "normal fluctuation" in load. SCE selected a 500 kW threshold because an increase of 500 kW is equivalent to adding a large industrial customer to SCE's system.

SCE explains that it files its Petition over a year after D.02-03-055 was issued because DA load growth and requests for increases in DA load did not occur immediately. Given the increase in the volume of requests over the past year, however, SCE developed certain interim procedures to respond to such requests, and is now filing its petition to obtain the Commission's approval of those procedures, as summarized below:

- Determine when additions of load on existing DA accounts will result in a "significant increase" is defined as an increase greater than 500 kW or 10% over current load, whichever is greater.
- Where it is determined that the load on a DA account has significantly increased (or will significantly increase), provide the customer with the option of returning to bundled service or separately metering the new load as a new bundled service account.

- Monitor cumulative DA load for large power customers. If it is determined that DA load is increasing significantly (*e.g.*, an increase of 10% above the level of DA load as of the beginning of 2003) then re-evaluate these procedures.
- Exclude DA customers that maintain DA demand of less than 500 kW from the second meter requirement.

C. Position of PG&E and SDG&E

On September 2, 2003, PG&E and SDG&E (the utilities) filed a joint response to the Petition to Modify D.03-04-057, and on September 3, 2003, filed a joint response to the SCE Petition to Modify D.02-03-055. In their joint response to SCE's Petition, the utilities agree with SCE that the Commission's DA suspension decisions limit load growth on existing DA accounts to "normal usage variations" and "normal load fluctuations," but disagree with SCE in terms of how to address the DA load growth that exceeds such "normal" variations.

PG&E and SDG&E agree that SCE's proposed approach would reduce administrative burden to the extent it focuses load growth limits only on the largest DA customers. PG&E and SDG&E oppose the SCE approach, however, arguing that it still would require considerable "policing" by the utilities, and would require uneconomic load splitting expenses to be incurred by large customers. PG&E and SDG&E thus ask the Commission to modify its "standstill approach" to eliminate restrictions on DA load growth on accounts in existence and under contract on September 20, 2001, in view of significant cost impacts on individual customers of splitting load. The utilities continue to support the prohibition in D.02-03-055, however, on *new* DA accounts being added after September 20, 2001. The utilities thus propose language changes to D.02-03-055 for this purpose.

PG&E and SDG&E, however, do not believe modification of D.03-04-057 is necessary or appropriate to accomplish this result. D.03-04-057 is a decision modifying one aspect of D.02-03-055 and does not change the underlying "standstill" policy adopted in D.02-03-055. While the utilities do not believe any changes to D.03-04-055 are necessary, they propose that the Commission convene a Rule 22 Working Group meeting to determine whether the affidavit developed by the utilities to implement D.03-04-055 needs further revision in light of a modification of the DA load growth rules.

The utilities claim their proposed D.02-03-055 modification to the Commission's "standstill" policy would minimize monitoring and policing of DA load by the utilities, while accommodating "reasonable" load growth. PG&E and SDG&E propose that load on DA accounts be allowed to grow to the point where the distribution facilities serving the customer (*i.e.*, wires, transformers, panels) need to be upgraded (referred to as a "panel upgrade") to accommodate the increasing load. Once a panel upgrade is requested, the customer would be required to physically divide the load allowing the original load amount as of September 20, 2001 to remain on DA with the increment being metered separately as a bundled service load.

Even though the utilities agree with petitioners that load on DA-eligible accounts should be allowed to grow, the utilities disagree with many of the statements and characterizations made in the Petition to Modify D.03-04-057. The utilities argue that petitioners obscure the real issue of allowable DA load growth by alleging that the utilities require a DA customer to install two meters whenever it changes its existing meter. At least for PG&E and SDG&E, however, only when a customer seeks a panel upgrade (which often does not require an upgraded meter) do the utilities seek to require that loads be split between DA

and bundled service charges. A panel upgrade means that significant load growth has occurred. The utilities would allow DA load to fluctuate within the limits of the capacity of distribution lines and equipment serving the load which PG&E and SDG&E believe more than accommodates daily and seasonal load variations.

The utilities argue that Petitioners' proposed change to Rule 6 in D.03-04-057 does not address the core question, namely, determining the allowable load growth for DA accounts. The proposed Rule 6 change would allow for "the installation of meters or meter reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers, including meter changes and upgrades caused by normal increases in load at pre-suspension accounts."

The utilities argue that granting this modification will lead to considerable confusion and new disputes over the meaning of the word "normal." The proposed modification to D.03-04-057 moreover, ignores the provisions of D.02-03-055 limiting DA load growth to "normal load fluctuations" and "normal usage variation." D.02-03-055 makes it clear that existing DA load growth is limited to "normal load fluctuations" or "normal usage variations" on existing DA accounts. New accounts are prohibited. Subsequent clarifications in D.03-04-057 state that that "normal load fluctuations" means "daily and seasonal load fluctuations" and that the Commission standstill policy is aimed at maintaining DA levels as they existed on September 20, 2001. Thus, the utilities argue, adopting the proposed modification to D. 03-04-057 would create an internal inconsistency with D.02-03-055.

D. Positions of Other Parties

On September 3, 2003, other parties also filed responses to the SCE Petition.[5] The Joint Parties (AREM and Albertson's) oppose the SCE proposal, but support the modified approach proposed by PG&E and SDG&E in response to the petition of SBC *et al.* to modify D.03-04-057. The Joint Parties claim that complying with SCE's two-meter policy would cause DA customers to incur significant costs without any corresponding benefit. The Joint Parties oppose SCE's Petition to Clarify D.02-03-055 and instead favor lifting the restrictions on load growth for "grandfathered" DA accounts[6] as suggested by PG&E and SDG&E.

The Joint Parties view the PG&E/SDG&E approach to the DA load growth issue as being simple, easy to implement, and less confusing than the SCE approach. In addition, the Joint Parties ask the Commission to clarify that the DA suspension rules should not be construed to prevent changes in the "normal course of business" including but not limited to changes in DA account or meter numbers, implementation of temporary accounts, or consolidation of multiple DA-eligible accounts into a smaller number of new DA accounts. Joint Parties argue that such changes in the identification of DA accounts do not affect the total amount of DA-eligible load and thus should not trigger a loss of a

[5] Responses to the SCE Petition were filed by SBC Services, Inc., University of California/California State University, and California Large Energy Consumers Association (collectively, the "Joint Petitioners"); PG&E and SDG&E; Strategic Energy L.L.C.; and the California Independent Petroleum Association CIPA).

[6] "Grandfathered" DA accounts refer to those accounts in effect prior to February 1, 2001, the effective date of AB 1X.

customer's DA rights, regardless of whether the Commission adopts the SCE approach or the PG&E/SDG&E approach.

Strategic Energy also opposes the SCE proposal and supports the PG&E/SDG&E approach. Strategic Energy argues that SCE's proposed two-meter policy would be unworkable and unenforceable with respect to splitting load between bundled and DA service. Strategic Energy argues that SCE has not demonstrated that DA load growth within its service territory has exceeded levels attributable to "normal load fluctuations" that are allowable under Commission rules, thus calling into question whether there is any shortcoming in the existing DA rules. Strategic Energy notes that the DA load figures posted on the Commission's website show that statewide DA load in May 2003 is virtually the same as in January 2002.

CIPA also opposes the SCE proposal at least until certain issues are clarified or modified. CIPA characterizes the SCE proposal as establishing a precedent ultimately requiring CIPA members to bifurcate their load growth and begin receiving separate bills as bundled customers. CIPA views such a result as inconsistent with the Commission's original intention, and argues that this proposal appears to have serious implications for self-generation. For example, if a gas producer installs a self-generation facility and zeroes out load growth, it is unclear whether the producers should be required to pay any cost responsibility surcharge (CRS). CIPA also questions when the clock would start for the purposes of assessing load growth under the SCE proposal.

II. Discussion

Because of their interrelated nature, we address herein: (1) the SCE Petition to Clarify D.02-03-055, (2) the Joint Parties' Petition to Modify D.03-04-057 and

(3) the Joint Utilities' Response to the above pleadings in which it proposes alternative modifications to D.02-03-055.

A. Position to Modify D.03-04-057

We agree with Petitioners that second meters and second bundled accounts should not be required for DA customers simply because meters are changed for any reason.[7] Yet, we disagree that Petitioners' claim that modification or clarification to D.03-04-057 is necessary or warranted to "make clear" that such is the Commission's policy. Existing Commission rules already articulate this policy clearly. Moreover, based on the pleadings by the UDCs, there is no indication that they are seeking to require DA customers to install second meters with bundled accounts any time a meter is changed. SCE denies that it is requiring DA customers to install a second bundled account "whenever a meter change is required," but only seeks to require a second bundled account to respond to requests by DA customers to "significantly increase DA load" based on criteria defined in its proposal.

Joint Petitioners infer that SCE's rationale for requiring a second meter is based on a misinterpretation of D.03-04-057 regarding "no net increase in DA load." Petitioners argue that because the issue of "normal load changes" at stationary DA accounts was not before the Commission in D.03-04-057, no basis is provided in that decision for SCE's practice of requiring a second meter based on a "significant increase " in DA load at a stationary DA location.

SCE, however, does not rely on the "no net increase in DA load" language in D.03-04-057 as a basis for its second-meter policy. SCE relies instead upon the

[7] Likewise, DA customers are not prohibited from having a second meter where they voluntarily elect to do so.

Commission's "standstill approach" to prevent "add-ons of new DA load" as required by D.02-03-055. Thus, even if we granted the modifications to D.03-04-057 sought by Petitioners, the "standstill" requirements of D.02-03-055 would still prohibit increases in DA load in excess of September 20, 2001 authorized levels. D.02-03-055 prohibits load on existing DA accounts from growing substantially above levels in effect as of September 20, 2001, with the only allowable growth on these accounts being limited to "normal usage variations." In this regard, D.02-03-055 states that:

> We favor a balanced approach which allows existing direct access customers to continue in the direct access market, *but limits additional load moving to direct access to load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001.* . . . Under the standstill approach . . . we will permit assignments and renewals, but not add-ons of new load. D.02-03-055, mimeo., at 18. (Emphasis added.)

Likewise, Finding of Fact 12 in D.02-03-055 states:

> It is reasonable to interpret a September [21], 2001 date for suspension of direct access to mean that the level of direct access load *as of that date* (irrespective of whether power flowed under any direct access contract) *should not be allowed to increase, apart from normal load fluctuations.* (Emphasis added.)

In addition, in AB 117, signed into law on September 24, 2002. (Stats 2002, ch. 838), the Legislature amended Public Utilities Code Section 366.2 to add subsection (d) in order to clarify its intent concerning the prevention of cost shifting relating to DWR cost recovery. This subsection states:

> "It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the [DWR's] electricity purchase costs, as well as electricity purchase contract obligations incurred. . . that

> are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature *to prevent any shifting of recoverable costs between customers*." (Pub. Util. Code, § 366, subd. (d)(1).) (Emphasis added.)

In comments on the Draft Decision, joint parties argue that the standstill principle equates ineligible new DA load growth only with *new* accounts, but not with increased load at *existing* accounts. Joint parties' argue that the prohibition in D.02-03-055 on additional load "moving to" direct access does not refer to the load already being served through existing DA accounts. We disagree. The references in D.02-03-055 to limitations on load "moving to" direct access do, in fact, refer to existing DA accounts. The Joint Parties referenced language in D. 02-03-055, as cited above, stating that the DA suspension "limits additional load *moving to* direct access to load changes associated with *normal usage variations* on direct access *accounts in effect as of September 20, 2001*." (Emphasis added.) The "movement" of load thus is specifically referenced to changes within existing accounts as of the suspension date.

Also, as defined in Finding of Fact 12 of D.02-03-055, quoted above, it is the overall level of DA load that is not allowed to increase, apart from normal load fluctuations. There is no separate exclusion from the suspension rules in Finding of Fact 12 for growth in DA load in existing accounts. The limitations prescribed by D.02-03-055 therefore do not allow for unlimited growth in DA load served at existing accounts, but only growth within "normal usage variations." As affirmed in D.02-03-055, while "assignments and renewals" were permitted under the standstill principle, "add-ons of new load" were not. Joint parties' proposed modification would be inconsistent with this restriction by permitting unlimited "add-ons of new load." Under the parties proposed modifications,

there would be no limit in "add-ons of new load" that could be negotiated with an Electric Service Provider (ESP) as long as the new load was linked to an DA existing account.

If unlimited load growth on existing accounts was intended by D.02-03-055, it would have been superfluous to add language limiting load growth eligible for DA only to "normal usage variations." Petitioners' requested modification to allow unlimited load growth on existing DA accounts is thus clearly in conflict with D.02-03-055.

Limiting load growth on existing DA accounts in this manner is required to "alleviate the significant cost-shifting of DWR costs onto bundled service customers." D.02-03-055 *mimeo.*, at 18. We confirmed this load growth limitation by clarifying in D.03-04-057 that the "standstill" policy is aimed at "maintaining the then-current levels of DA" as of September 20, 2001. (D.03-04-057, *mimeo.*, at 14.) We also clarified that "normal usage variations" means "daily and seasonal load fluctuations." (D.03-04-057, *mimeo.*, at 17.) Thus "normal load variations" cannot refer to unlimited growth of load on DA accounts from expanding customer operations, but instead refers to the daily and annual load shape or profile associated with DA load authorized under contract as of September 20, 2001.

Petitioners argue that placing DA eligibility limits on the growth of new load at existing DA accounts would disrupt the DA market and customer service. Parties argue that many DA contracts are "full requirements arrangements" that cover "incremental load," if any, since September 20, 2001. Parties argue that requiring such customers to place that incremental load on bundled utility service is a "substantial interference" with those contracts.

We recognize that under the standstill principle, DA load volumes under contract as of the suspension date are permitted even though the actual level of DA power flowing on September 20, 2001 may have been below the total contracted volumes in effect on the suspension date. Thus, we do not intend to prevent DA customers from increasing load on existing DA accounts so long as any such load increases do not exceed the volumes that were authorized under contractual arrangements executed on or before September 20, 2001. The fact that DA power had not yet flowed under a particular ESP contract as of September 20, 2001, would not preclude increases in DA load deliveries on an existing account up to the level provided for under contracts in effect on that date. The governing criteria under the standstill principle, therefore, is whether the load had been contracted for as of the suspension date. This principle is articulated in Finding of Fact 12 of D.02-03-055 where the Commission stated that suspension applied to the level of direct access load in effect as of September 20, 2001 "*irrespective of whether power had yet flowed under any direct access contract.*"

Thus, even to the extent the actual growth in DA load occurred after September 20, 2001, the standstill principle still is observed as long as the contractual commitment associated with the load growth was made on or before September 20, 2001. On the other hand, the suspension rules adopted in D.02-03-055 preclude contractual "add-ons" of DA load commitments entered into after September 20, 2001 even if such increases are assigned to an existing DA account. Thus, permitting incremental load growth at existing DA accounts attributable to "add-ons" of new load that were executed under contract after September 20, 2001 would conflict with the suspension rules adopted in D.02-03-055.

Thus, we conclude that the modifications sought by Petitioners would violate the "standstill principle" and related statutory requirements to suspend DA to the extent they allow unlimited DA load growth beyond authorized contract volumes as of the suspension date. Moreover, the modification of D.03-04-057 proposed by Petitioners is overly broad and vague. Petitioners' proposed modification refers to "meter changes and upgrades caused by normal increases in load." Yet, Petitioners fail to define what constitutes "normal" increases in load, as distinguished from "abnormal" or "supernormal" increases. Given this ambiguity, allowing DA billing to apply to "normal increases in load" fails to provide safeguards to enforce the mandated suspension of new direct access volumes as adopted in D.02-03-055. To the extent such "normal" increases in load fail to delineate the constraints imposed by our suspension rules, permitting such load increases to qualify for direct access would violate our statutory mandate to suspend direct access, and related Commission decisions implementing that suspension. Accordingly, we deny the Petition to modify Rule 6 of D.03-04-057.

Joint Petitioners suggest that the utilities may be relying on a typographical error in Conclusion of Law of D.03-04-057. Although we do not believe SCE relied on a typographical error for its position, we do agree that a typographical correction is appropriate to insert the word "not" into Conclusion of Law 8 in D.03-04-057 as follows:

> "The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are <u>not</u> intended to prohibit load changes associated with normal usage variations for accounts at other locations that are eligible for DA as of September 20, 2001." (Correction underlined.)

This typographical correction, however, has no substantive effect on the disposition of either of the Petitions at issue here.

B. SCE Petition to Modify D.02-03-055

While we agree with SCE that unlimited load growth experienced by DA customers that exceeds authorized limits in effect as of September 20, 2001, beyond "normal load fluctuations," does not qualify for DA service, we disagree with the means by which SCE proposes to implement its "two-meter" policy.

As noted by opponents, there are detrimental effects in terms of the cost, disruption, and confusion that the second metered account would cause. SCE provides no refutation that at least some additional customer cost and disruption would likely result from the installation of second meters, even if the specific magnitude may be questioned.

Moreover, while SCE's procedures would impose additional burdens on DA customers, its proposed criteria for installing second meters fail to correspond to DA suspension levels. SCE's proposed procedures to install a second meter would merely be activated upon detection of a "significant increase" in DA load in any given account beyond "current" levels. SCE would separately meter "new load" that is in excess of 500 kW or 10% of "current load."

It is unclear as to what data SCE would use to determine "current load" or to what extent "current load" for any given authorized DA account is an appropriate baseline proxy for the maximum level of DA contract load as of the September 21, 2001 suspension date. SCE's mere reference to "current levels" of load provides no means of determining whether such load levels necessarily correspond to the authorized contract limits in effect as of September 20, 2001, taking into account "normal load fluctuations" as allowed under existing suspension rules. A more meaningful approach would be to measure growth in

DA load in relation to the authorized maximum level of authorized DA load as of the September 20, 2001 suspension date.

While we agree with SCE's ultimate goal of adhering to the "standstill principle" in D.02-03-055 regarding DA suspension, we disagree with its proposed method of determining what constitutes "excess" load, and its approach of requiring separate metering of such "excess" load. Requiring an extra meter as proposed by SCE is not the most efficient or beneficial way by which load growth in DA accounts beyond the level authorized as of September 20, 2001 could be recognized.

Conformance with the Commission's standstill principle does not require separately metered data to the extent that a process can be used to avoid cost shifting and to maintain bundled customer indifference.

C. Proposed PG&E/SDG&E Modifications to D.02-03-055

While the modifications to D.02-03-055 proposed by PG&E and SDG&E would entail less cost and disruption to customers, we still find the PG&E/SDG&E proposal would conflict with the statutory suspension of direct access and would risk cost shifting prohibited by D.02-03-055, and thus, in violation of AB 1X and AB 117. Although the PG&E/SDG&E proposal would prevent DA customers from adding new accounts for DA service beyond the DA load in effect as of September 20, 2001, those at existing locations and meters would be allowed to grow beyond September 20, 2001 levels. The current policy of the Commission, as discussed above limits load growth existing DA accounts and prohibits new DA accounts after September 20, 2001.

Under the PG&E/SDG&E proposal, a second meter would still be required for certain incremental load growth, but only at the point where distribution facilities capacity growth required a panel upgrade. PG&E and SDG&E concede,

however, that a panel upgrade signifies that peak load has grown substantially, typically more than 10 %, and probably exceeds what might be considered a "normal load fluctuation." Thus, the PG&E/SDG&E proposal would allow DA load to grow beyond legally permissible limits under the "normal load fluctuation" standard in violation of the statutory suspension mandate.

Such proposed modifications would fundamentally change the "standstill principle" adopted in D.02-03-055 to implement DA suspension. Parties have not justified the legal permissibility of lifting the suspension on DA load growth under the statutory requirements of AB 1X and AB 117. Our DA "standstill" policy, adopted in compliance with these statutory requirements mandating the suspension of DA, prohibits cost shifting among customer groups, and holds DA load responsible for its fair share of DWR and related utility procurement costs.

PG&E and SDG&E argue, however, that the resulting incremental shift of DWR costs from their proposal should be "relatively insignificant" for bundled customers, "*provided that the DA `load pays its share of the CRS*." The utilities also argue that any cost shifting that results from a capped DA CRS will be temporary and ultimately, DA loads will pay their full share of Department of Water Resources (DWR's) costs over time even if one assumes that the incremental DA load would otherwise have been bundled load if the "no growth" policy were maintained.

Ignoring growth limits on existing DA accounts would conflict with the requirement to keep bundled customers indifferent between DA suspension as of July 1, 2001 versus September 20, 2001. Likewise, retention of the 2.7 cents/kWh surcharge, as adopted in D.03-07-030 was predicated on payback of the DA cost responsibility undercollection no later than the termination date of the DWR

contracts. The payback analysis, in turn, relied upon the indifference cost approach between authorized DA load levels at September 21, 2001 versus July 1, 2001 as adopted in D.02-11-022. Thus, the assumptions underlying D.03-07-030 regarding the adequacy of the 2.7 cents cap could be undermined by removal of DA suspension limits.

While more DA load would pay the 2.7 cents surcharge, unrestricted growth in DA load would simultaneously increase the DA cost responsibility undercollection (to the extent actual DA cost responsibility exceeds 2.7 cents/kWh). The incremental 2.7 cents/kWh surcharge collections thus would not capture the increased DA undercollection triggered by the incremental DA load growth that is based upon *total* cost shifts under a DA-in/DA-out comparison, not just the fraction covered by the surcharge cap.

We therefore decline to grant parties' requested modifications to Rule 6 of D.03-04-057 in view of our statutory obligations to prevent cost shifting and to hold DA load responsible for its "fair share" of DWR costs. Likewise, we find the proposed procedures offered by SCE, and the alternative offered by PG&E/SDG&E inappropriate as a means of enforcing the "standstill principle."

D. Load Growth Workshop

With the denial of the respective petitions for modification, we are left with the question of how to address potential increases in DA load beyond what the suspension rules allow and ways of assuring compliance with these rules. As a means of reaching consensus on issues relating to DA load growth, the Energy Division conducted a workshop on March 11, 2004. The Workshop provided an opportunity to seek consensus concerning processes, procedures, and/or administrative measures to address growth in DA load in a manner consistent with the Commission's suspension rules.

Through the workshop process, participants sought consensus on ten principles proposed and distributed by PG&E, on behalf of itself, SDG&E, and SCE. At the conclusion of the workshop, Energy Division produced a workshop report summarizing areas of agreement and disagreement.

Participants submitted statements to the Energy Division on March 19, 2004, identifying areas of agreement on the DA load growth principles discussed and commenting on the agenda items. Subsequently, on March 15, 2004, PG&E, SDG&E and SCE jointly issued a document entitled, "Principles Proposed by PG&E, SCE, and SDG&E for Dealing with DA Load Growth in Conformance with CPUC DA Suspension Orders (Revised March 15, 2004)." Those proposed principles are set forth herewith:

1. Load growth is permitted on existing non-continuous DA accounts provided that the load growth does not result in customer's total load exceeding the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions.
2. Utilities are not required to review, monitor, interpret or make recommendations regarding ESP/customer DA contracts.
3. An affidavit process will be developed, if determined by the Commission to be necessary, to provide verification of the contracted amount of DA load.
4. The Commission's determination in the DA suspension decisions prohibiting *new* contracts and arrangements for DA service, and add-ons of new load after September 20, 2001 remains in effect.
5. The utilities should not be permitted to require customers to "split" existing DA accounts into a pre-DA suspension load portion (entitled to DA rates) and a post-DA suspension load growth portion (which would be required to pay bundled service charges). Thus no second meter or

split billing should be required on eligible DA accounts. The customer and the utility could, however, by mutual agreement, install a second meter to split existing DA accounts between DA and bundled service.

6. DA load growth should not cause significant cost-shifting to bundled service customers.

7. To allow some degree of flexibility for customers, but to ensure that non-continuous DA load growth does not place a burden on bundled customers, a growth trigger could be established for total non-continuous DA load growth. If that trigger were exceeded, the DA CRS accrual rate and cap would be reviewed. The growth trigger would be based on the degree of growth that causes a significant financial burden on bundled customers. Establishment of the growth trigger and reevaluation of the DA CRS accrual rate and cap would occur in the regularly scheduled DA CRS proceedings. In the event that the trigger is exceeded in between regularly scheduled DA CRS proceedings, the utilities or the Commission may initiate earlier review. For purposes of these principles, "DA CRS" refers to the DWR bond charge and the DWR power charge.

8. Any future DA CRS adjusted for DA load growth would apply to all billable non-exempt DA load, not just the incremental DA load above the pre-suspension levels.

9. Continuous DA accounts (*i.e.*, exempt from DA CRS) should continue to be exempt from DA CRS for all load on the accounts.

10. (Alternative A): With respect to relocations and replacements of DA accounts addressed in Decision 04-02-024, such replacements and relocations shall be permitted as long as the customer's total DA load after a replacement or relocation does not exceed the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions.

11. (Alternative B): With respect to relocations and replacements of DA accounts addressed in Decision

> (D.) 04- 02-024, such replacements and relocations shall be permitted so long as (i) the customer closes its old account and (ii) the customer's total non-continuous DA load as of the relocation or replacement does not exceed the actual level of load on all existing DA and DA eligible accounts (*i.e.*, accounts on the November 1, 2001 ESP lists) consistent with D.04-02-024 (*i.e.*, D.04-02-024 permitted new DA accounts to be added "as long as there is no net increase [in load] across all eligible DA accounts.") (Decision at p.11.)

The participants each agreed to provide the workshop facilitators with a statement, by March 19, 2004, of support for or disagreement with the revised principles, and a discussion of the items on the workshop agenda. Parties' March 19, 2004 comments and the Workshop Report, as reflected in the March 15, 2004 revision circulated by PG&E, reflect a general consensus for the 10 principles, including Alternative A of Principle 10.

Consensus was achieved on Principles 2, 3, 6, 7, and 9. Consensus was achieved with all parties except The Utility Reform Network (TURN) on Principles 1 and 5. Consensus was reached with all parties except Federal Executive Agencies (FEA) on Principle 8. FEA's concern was that any increment in the DA CRS resulting from the growth trigger could be construed as a tax upon its customers, which are part of the Federal Government.

In response to parties comments, we conclude that the 10 proposed principles developed by workshop participants, with incorporation of certain clarifications proposed in comments, provide a reasonable disposition of the issues originally raised in the Petitions to Modify D. 03-04-057 and D. 02-03-055, as referenced above. As discussed below, the principles represent broad consensus and meet all essential criteria for conformance with the public interest, including bundled customer indifference and DA customer flexibility. Accordingly, we adopt the principles set forth in Appendix 1, which are based

upon the areas of general consensus as agreed to among the workshop participants.

E. Adoption of Load Growth Principles

1. Overview

We find that the parties' proposed principles are reasonable, and provide a practical and comprehensive solution to avoid both cost shifting as well as expensive DA load splitting and customer-by-customer disputes over DA load growth. The principles provide for DA CRS adjustments when or if DA load growth becomes significant.

We disagree with TURN's assessment of the proposed principles lack any meaningful limitation on the growth of DA. TURN argues that Proposed Principle #1 effectively abandons the provision of D.02-03-055, limiting "additional load moving to direct access to load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001, and that the whole concept of 'normal usage variations' would apparently be eliminated." If Principle #1 is adopted, however, TURN proposes that each DA customer with a load over 50 kw inform the utility what "the contracted level of DA load defined by the terms of customer's DA service contract" is, so that the utility can determine from its own records if that level is ever exceeded.

We disagree with TURN that Principle #1 would eliminate the Commission's standstill principle. The Commission has found that "it is reasonable to interpret a September 20, 2001 date for suspension of direct access to mean the level of direct access load as of that date (irrespective of whether power had yet flowed under any direct access contract) should not be allowed to increase, apart from any normal load fluctuations." (D.02-03-055, Finding of Fact 12.) This finding can reasonably be read as including load growth allowed

on a particular account by the DA contract itself. Moreover, under principle 3, consistent with the Commission's DA suspension decisions, new accounts or contracts cannot be added. The continued prohibition on any new DA load (not contracted for on September 1, 2001) makes the standstill principle quite real and acts to eliminate most of the opportunity for DA load growth inconsistent with DA suspension.

Principle 1 does not eliminate the concept of "normal load fluctuations." This provision can be read either as load growth allowed under the particular contract in the normal course of business, or as an additional margin of load allowed on top of the load allowed under the contract.

Although TURN prefers PG&E's original "panel upgrade" approach to DA load growth, this proposal was highly contentious. Further, this proposal would have caused unneeded expenditures for splitting loads, and was an inefficient solution. The aggregate DA load growth approach applied under the adopted principles is simpler, not economically wasteful, protects bundled customers and can is consistent with the intent of the Commission's DA suspension decisions. We address specific elements of the Principles in the discussion below.

2. Affidavit Requirement

TURN claims the proposed principles lack any enforcement tools for the remaining restrictions on DA load growth. Yet, Principle 3 provides for an affidavit process – already used to determine a DA customer's eligibility to be on DA in the first instance – for customers to verify that they are not exceeding contractual limits.

If the terms of the customer's contract are to provide the *only* limit on DA load growth, however, then TURN argues that such an affidavit must be

mandatory for customers above a certain size, for example, at or above 50 kw. Alliance Retail Energy Market (AreM), by contrast, doubts whether an affidavit process is necessary. However, if such a process is deemed to be appropriate, AReM believes the affidavit should be developed through the Rule 22 Working Group process. TURN argues that compliance with the rules will inevitably decline over time as parties realize that there are no consequences for noncompliance.

We conclude that an affidavit process is appropriate for customers to verify that they are not exceeding contractual limits. As suggested by TURN, we shall require that the affidavit apply to customers with DA load above 50 kw We shall direct that a Rule 22 Working Group meeting be develop consensus on the form and process for administering the affidavit. The verifying affidavit should be submitted under penalty of perjury.

3. Load Growth Trigger

Principle 7 provides for a "trigger" to be established to alert the Commission and the parties when the impact of DA load growth on an aggregate basis is potentially reaching material levels, causing significant cost shifting to bundled customers.

PG&E suggests a process to set the DA load growth trigger called for under Principle 7. Once the trigger is established (presumably after the Commission has issued a decision adopting the principles), PG&E proposes that the Energy Division be directed to review the monthly utility DA load reports, and notify the Commission if DA load growth exceeds the trigger level. The Commission can then decide what steps are necessary to address the situation.

SDG&E, along similar lines, proposes a "growth trigger" level of 15%. If, based on the utilities' monthly DA activity reports submitted to the

Commission, aggregate DA load increases within a given utilities' service territory more than 15% above DA levels in existence as of the date of the Commission's order in this proceeding, SDG&E proposes that a party may make an appropriate filing with the Commission requesting review of the impacts of such load growth.[8] Otherwise, the Commission would review the impacts of any load changes on the DA CRS according to the schedule outlined in D.03-07-030. SDG&E believes that DA load growth less than 15% in a service territory, while possibly worthy of analysis in the next DA CRS review, would not be large enough to warrant a premature review of a utility's DA CRS undercollection.

SDG&E argues that its proposal protects bundled customers and provides some flexibility to DA customers, and allows utilities the opportunity to administer DA load growth policies without reviewing customers' contracts, either DA contract limits or actual DA levels as of a certain date. The proposal resolves the debate as to what a "normal load fluctuation" and "normal usage variation" is, and will help conserve the Commission's and parties' resources. SDG&E requests that this rule for implementing Principle 7 be adopted as part and parcel of Principles 1 through 9 and 10.a.

AReM and CMTA argue that the need for a "growth trigger" has not been demonstrated. As of January 31, 2004, DA load currently amounts to 13.2% of the total based on the Energy Division's 'Direct Access Implementation Activities Report,' which is down from the post-crisis high of around 14%. At the workshop, the utilities confirmed that they had seen very limited load

[8] The utilities could send their public DA monthly activity reports to everyone on the service list so that all could promptly monitor changes in DA load in each service territory.

growth among individual customers." Should such a "growth trigger" be deemed necessary, AReM suggests its establishment occur in the regularly scheduled DA CRS proceedings, rather than on an individual utility basis. There is a need for uniformity on this issue so that the issue is addressed on a statewide, rather than utility-by-utility, basis.

The growth trigger provides a safeguard against unforeseen growth. We shall adopt SDG&E's proposal for a 15% growth trigger at least as an interim figure. Moreover, if the DA parties are correct that overall DA load growth remains static, then the trigger will not be activated.

4. Replacement Contract Load Shall Not Exceed Load in Original DA Contract

TURN points out that customers may execute new contracts after September 20, 2001 if they switch between ESPs (this is allowed by the Commission under D.02-03-055, p. 21 (Rule 4)). At the workshop, however, a discussion if this issue revealed parties' understanding to be that the replacement contract with the new ESP could not exceed the amount in the original DA-eligible contract. We accept this clarification and incorporate it as a feature of the adopted rules.

5. Issues Relating to Alternative B of Principle 10

With respect to Principle 10, parties submitted two alternative versions. With respect to DA load relocations and replacements addressed in D.04-02-024, Principle 10 (Alternative A) proposes that the benchmark for allowable load growth resulting from relocations and replacements be defined (consistent with Principle 1) as the load growth allowed under eligible DA suspension contracts, *i.e.,* "no net increase" should be defined in reference to the contractual load limitations in contracts covering eligible DA accounts. We adopt Alternative A of Principle 10 which was supported by most parties.

SCE sponsored Alternative B of Principle 10, which was also supported by TURN.[9] SCE continues to express concerns regarding the interplay between D.04-02-024, which requires that there be "no net increase" in load as a result of adding a new, relocated account, and any ultimate decision on DA load growth that would allow DA load to grow up to the "total contracted amount" as of September 20, 2001. SCE argues that safeguards are needed to ensure that DA customers do not misuse the relocation provisions of D.04-02-024 to add new accounts that have significantly larger loads than the existing accounts, when actual relocations of load are not occurring. SCE argues that its proposed Principle 10 Alternative B, provides such a safeguard. Alternative B would (i) require a DA customer to close its facilities and operations at the old account as part of its "relocation" process and (ii) prevent a DA customer from increasing its DA load beyond the actual level of load on all existing and DA-eligible accounts as of the date of the relocation, as required by D.04-02-024.

Other parties oppose Alternative B arguing that (1) it would conflict with all the other principles, (2) it reaches an unnecessary interpretation of D.04-02-024, and (3) it is unclear and ambiguous. TURN supports Alternative B of Principle 10, claiming it is consistent with the "standstill approach" and with

[9] Alternative 10 B stated: "With respect to relocations and replacements of DA accounts addressed in Decision (D.) 04- 02-024, such replacements and relocations shall be permitted so long as (i) the customer closes its old account and (ii) the customer's total non-continuous DA load as closes its old account and (ii) the customer's total non-continuous DA load as of the relocation or replacement does not exceed the actual level of load on all existing DA and DA eligible accounts (i.e., accounts on the November 1, 2001 ESP lists) consistent with D.04-02-024 (i.e. D.04-02-024 permitted new DA accounts to be added "as long as there is no net increase [in load] across all eligible DA accounts.") (Decision at p.11)."

the direction in D.04-02-024, which permits new DA accounts to be added "**as long as there is no net increase [in load] across all eligible DA accounts**." (*See* Workshop Agenda, item 1.g and D.04-02-024 at p. 11). TURN argues that DA customers would be allowed to take advantage of the relocation exception **or** the load growth exception but not **both**, because allowing both exceptions for the same customer would destroy the standstill concept.

We decline to adopt Alternative B of Principle 10. D.04-02-024 permitted new DA accounts to be added through replacement or relocation "as long as there is no increase in the **total net DA load** between all the original and their replacement facilities" (OP 3, emphasis added). Principle 1 interprets allowable DA load as being load allowed by the customer's DA contracts. The bolded language from D. 04-02-024, which establishes the benchmark load which a replacement or relocation cannot cause the customer to exceed, should therefore be read consistent with the limit on load growth absent any relocations or replacements. Thus, if a customer's existing DA account allows load to increase by 50 percent, this would be allowed by principle 1. It seems logical to allow the same load growth of the customer replaces or relocates the account. SCE's alternative B would set up different and conflicting load growth benchmarks.

Alternative B of Principle 10 interprets "total net DA load" as being "actual" load. There is nothing in D. 04-02-024, however, that requires the word "actual" to be implied. We shall interpret "total net DA load" as "contracted" load, as proposed in Alternative A.

Alternative B also is unclear and could lead to disputes. Under Alternative B, the relocation or replacement would be permitted as long as "the customer's total non-continuous DA load as of the relocation or replacement

does not exceed the actual level of load on all existing DA and DA eligible accounts." Alternative B, if adopted, would require more clarification as to how it would be applied. For example, clarification would be needed as to whether the total DA load as of the relocation or replacement is measured before or after the relocation or whether the limitation is intended to cap increases in actual load from relocation at the level of load of remaining bundled DA-eligible accounts of that customer. In view of these considerations, we decline to adopt Alternative B.

6. Disposition of Customer Loads Under PG&E's Previous Panel Upgrade Policy

Dean Foods argues that customers whose loads were physically split under PG&E's previous panel upgrade policy should be refunded the costs of installing the second meter and have all their loads placed on direct access. PG&E agrees that such customers should have their loads placed on direct access prospectively to the extent the customer meets the requirements of the principles, but disagrees that costs incurred by the customer to comply with the utilities' prior good faith interpretations of Commission orders should be refunded. PG&E argues that it should not be penalized for its earlier good faith efforts to implement Commission policy on DA load growth. We agree with PG&E. No refunds shall be required retroactively for the effects of prior load splitting.

7. CRS Increases Do Not Constitute a "Tax"

FEA contends that principle 8, as drafted, would impose any increase in the DA CRS made necessary by DA load growth on all non-exempt DA load, not just the incremental load above pre-suspension levels. FEA claims that such an increase in the CRS on the federal government's DA load may be an impermissible tax on federal customers to the extent that it represents a charge for goods and or services not rendered.

We disagree with FEA's characterization. The DA CRS is not a "tax," but is a charge for DWR costs and ongoing CTC costs for which the non-continuous DA customers are responsible, including DA customers which are departments or agencies of the federal government. Moreover, because all DA customers, including federal agencies or departments, may increase load on existing accounts up to the contractual limit, it makes sense to apply any increase in the CRS to all DA load.

8. Clarification of DACRS in Principles 7 and 9

PG&E introduced certain new language to the final version of principle 7 distributed on March 15, 2004. The added language stated "For purposes of these principles, 'DA CRS' refers to the DWR bond charge and the DWR power charge." This language was introduced to clarify the workshop discussion that continuous DA accounts will continue to be liable for ongoing Competition Transition Charge (CTC) and is therefore more properly applicable to Principle 9. To avoid any implication that incremental non-continuous DA load should be exempt from the Ongoing CTC component of DA CRS, PG&E proposes that Principles 7 and 9 should be revised as follows. With respect to Principle 7, PG&E proposes to strike the last sentence, reading:

With respect to Principle 9, PG&E proposes to insert the phrase "DWR components" as follows:

> Continuous DA accounts (i.e., exempt from DA CRS) should continue to be exempt from <u>DWR components of</u> DA CRS for all load on the accounts.

PG&E's clarifications and reasonable and we incorporate them into the body of the adopted principles.

9. Effects of DA Load Growth on the Calculation of DA CRS Obligations

The workshop also addressed the issue of how, if at all, the ongoing annual DA-in/DA-out indifference calculation of CRS is impacted by permitting growth in load beyond the levels that were originally in effect as of the DA suspension date. In comments provided to the workshop, PG&E and SDG&E suggested that this issue is best addressed in the DA CRS review proceedings.

In another phase of this proceeding, concerning determination of DA and departing load cost responsibility for the 2001-2004 period, DWR raised a relevant question of how the post-July 1, 2001, DA load should be estimated for modeling purposes. TURN argued that the non-exempt DA load used in any back-cast calculation must be actual, recorded DA load. PG&E agreed with TURN. Using the DA loads as they currently exist for the period which the indifference calculation is intended to cover is the way to most nearly hold bundled customers indifferent to where they would have been had DA been suspended. PG&E thus believes that Post-July 1, 2001, direct access load used to calculate the indifference amount should be based on the amount that actually exists (or is forecasted to exist, if the indifference amount is calculated on a forecast basis) for the period for which the indifference amount is being calculated. We agree. Modeling the indifference amount on such basis will allow capturing any additional cost shifting caused by DA load growth.

10. Conclusion

In conclusion, we adopt the 10 principles as set forth in Appendix 1 for purposes of addressing DA load growth in a manner that maintains bundled customer indifference while also providing needed business flexibility to DA customers. The Commission's "standstill" principle (adopted pursuant to D.02-03-055) is preserved by limiting DA load and DA load growth to load under

contract as of September 20, 2001; new contracts and accounts are not allowed. Bundled customers are protected from cost shifting as required by AB 1X, as clarified by AB 117, and in our Commission decisions, including D.02-11-022. Cost shifting from unexpected DA load growth can be addressed by adjusting the DA CRS accrual rate and cap.

Under the Principle 4, consistent with the Commission's "standstill" principle, new contracts after September 20, 2001 (except for replacement contracts with new ESPs as allowed in D.02-03-055), would not be permitted. Accordingly, there will be no load growth associated with those contracts. The load growth that would be permitted, under principle 1, would be load growth within the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions.

The principles provide for verification of allowable DA load growth through an affidavit process consistent with a similar affidavit processes adopted by the Commission for administering DA eligibility, and relocations and replacements. The principles (through Alternative A of principle 10) harmonize DA load growth with permissible replacements and relocations by applying a uniform benchmark to both load growth on existing accounts and load growth on relocations and replacements. The principles avoid (1) any requirement for customers to implement uneconomic load splitting through expensive reconfiguration of facilities and (2) expensive new billing functionality which would need to be installed by the utilities in order to issue split bills. The principles avoid the need for review by utilities of ESP/customer contracts.

We conclude that these principles offer a practical approach to the DA load growth. Parties were not able to quantify the amount of DA load under

full requirements contracts. Some customers at the workshop commented that even full requirements contracts have quantity limits. Most parties who had seen full requirements contracts recalled that these contracts do have maximum ESP commitments to provide power and energy and thus are not unlimited. One participant indicated that Financial Accounting Standard 133 mitigates against contracting for more power than a customer can reasonably use currently, because the remainder of the transaction would be considered speculative and thus of higher risk.

The utilities indicated at the workshop that to date they are seeing very limited DA load growth. Assuming this situation continues, there should not be any significant DA load growth in existing accounts. Furthermore, some customers have switched from DA service back to bundled service, resulting in a lower amount of net load growth. The likelihood of a significant cost shifting is limited by the fact that every revision of the DA CRS to date has resulted in a lower CRS obligation per year.

III. Comments on Draft Decision

The initial draft decision of the ALJ in this matter was mailed on October 14, 2003, to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on November 3, 2003, and reply comments were filed on November 10, 2003. A revised draft decision was mailed on December 9, 2003. Comments on the revised draft were filed on December 30, 2003. A subsequent revised draft decision was mailed on January 21, 2004. Comments were filed on January 28, 2004. In their comments, certain parties proposed that the load growth issues raised in the petitions "should be addressed and discussed by

interested parties in a workshop setting where clear guidelines can be established that take the rights and interests of DA customers into account."[10]

In response to parties' comments, the draft decision was withdrawn from the Commission's agenda to provide an opportunity to convene a workshop, as requested, to address the manner in which DA load growth should be treated consistent with the Commission's DA suspension rules and taking into account the "rights and interests" of DA customers. As discussed above, the principles developed through the workshop process form the basis for resolving the issues raised in the petitions.

IV. Assignment of Proceeding

Geoffrey F. Brown and Carl Wood are the Assigned Commissioner and Thomas Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.03-04-057, the Commission clarified that the "standstill" policy is aimed at "maintaining the then-current levels of DA" (*i.e.*, as of September 20, 2001).

2. In D.03-04-057, the Commission clarified that "normal usage variations" means "daily and seasonal load fluctuations," and thus does not include growth of load on DA accounts from expanding customer operations, as proposed by Petitioners' modification.

[10] *See* Comments of "Joint Parties" on the RDD, pp. 5-6, filed January 28, 2004. *See* also Comments of the University of California and California State University, p. 2, filed January 28, 2004.

3. Joint Parties' proposed modification to Rule 6 of D.03-04-057 fails to provide a definition of "normal increases in load" that would permit enforcement of the "standstill principle" adopted in D.02-03-055.

4. Granting the requested Modification of Rule 6 of D.03-04-057 would not address the concerns raised by Joint Parties opposed to SCE's two-meter policy.

5. The proposal of PG&E and SDG&E (*i.e.*, to permit DA load growth up to the point where capacity requires a panel upgrade) would violate the standstill principle under D.02-03-055.

6. A panel upgrade request signifies that peak load has grown substantially, typically more than 10 %. At least in some cases, such growth probably exceeds what might be considered a "normal load fluctuation."

7. SCE's proposal would impose additional burdens on DA customers, but its proposed criteria for installing second meters fail to relate to any relevant benchmark that corresponds to September 20, 2001 DA suspension levels.

8. SCE's reference to "current levels" of load in its proposed process for second meters is unduly vague and provides no means to determine whether such levels necessarily correspond to the authorized contract limits in effect as of September 20, 2001, taking into account "normal load fluctuations" as allowed under existing suspension rules.

9. SCE has not justified that its proposed modifications are an appropriate way to implement the Commission's standstill principle, or that the modifications are fair to DA customers.

10. The Workshop convened on March 11, 2004, provided an opportunity to seek consensus concerning processes, procedures, and/or administrative measures to address growth in DA load in a manner consistent with the Commission's suspension rules.

11. Through the workshop process, participants reached general agreement on ten principles, with limited disagreement, as follows. Consensus was achieved on Principles 2, 3, 6, 7, and 9. Consensus was achieved with all parties except TURN on Principles 1 and 5. Consensus was reached with all parties except FEA on Principle 8.

12. The 10 principles to which most participants agreed provide a reasonable resolution of the issues raised by the petitions to modify.

13. With respect to Principle 10, Alternative A should be adopted, rather than Alternative B, since it promotes greater clarity and overall consistency.

14. An affidavit requirement for large DA customers provides a reasonable process for verification of contracted load.

15. A DA "growth trigger" provides a safeguard against unforeseen growth. SDG&E's proposal for a 15% growth trigger provides a reasonable interim figure.

16. No refunds should be required retroactively for the effects of prior load splitting by PG&E.

17. The DA CRS is not a "tax," but is a charge for DWR costs and ongoing CTC costs for which non-continuous DA customers are responsible, including federal government DA customers.

18. To avoid any implication that incremental non-continuous DA load should be exempt from the Ongoing CTC component of DA CRS, the modifications proposed by PG&E to Principles 7 and 9 are reasonable.

19. Any violations of the Commission's DA suspension rules constitute grounds for consideration of any appropriate sanctions, including those available under Rule 1 of the Commission's Rules of Practice and Procedure.

20. Subject to appropriate materiality thresholds, DA customers to bear the burden of proof to the extent they assert that material increases in DA loads

beyond actual levels flowing as of September 20, 2001, fall within authorized contractual volumes under DA contracts executed prior to the September 21, 2001 suspension date, including producing applicable load related contract excerpts (subject to appropriate confidentiality protections) to support their assertions, and being subject to Commission staff spot audits.

21. Notwithstanding prohibitions to the contrary, in the event that a DA customer increases DA load beyond permissible volumes allowable under contracts in effect prior to the September 21, 2001 suspension date, appropriate adjustments to the DA cost responsibility obligation for any such material excess volumes is warranted to prevent cost shifting.

22. In order to capture the effects of any impermissible DA load growth beyond the authorized levels under contract as of September 20, 2001, such material growth in load levels must be included as incremental load subject to an assessment of DWR-related costs in performing the DA-in/DA-out indifference cost calculations.

23. To the extent that the effects of including such impermissible DA load growth in the DA-in/out incremental volume calculation affects the overall DA cost responsibility obligation, an adjustment in either the DA CRS cap or DA CRS undercollection would provide a reasonable vehicle to maintain bundled customer indifference.

Conclusions of Law

1. The modifications to D.03-04-057 sought by Petitioners would violate the "standstill principle" adopted in D.02-03-055 and related statutory DA suspension requirements of AB 1 X and AB 117.

2. The modifications of D.03-04-057 proposed by Petitioners is overly broad and vague with respect to the definition of "normal load growth."

3. Without adequately addressing the bundled customer cost impacts of removing DA load restrictions, parties have not justified the proposed modification to D.03-04-057.

4. The Joint Parties' Petition to Modify Rule 6 of D.03-04-057 should be denied, but the typographical error in Conclusion of Law 8 in that decision should be corrected.

5. SCE has failed to justify that its proposed procedures for requiring a second metered account for DA customers is an appropriate way to enforce the Commission's "standstill" rule.

6. SCE's Petition to clarify D.02-03-055 should be denied.

7. PG&E and SDG&E have failed to justify that their alternative criteria for requiring DA customers to install a second meter are consistent with the Commission's "standstill principle."

8. To the extent that increases in the load level served through a DA account subsequent to September 20, 2001 are based upon contractual load commitments that were executed on or before September 20, 2001, such load levels thus are properly entitled to DA treatment since they were negotiated prior to the date of suspension.

9. The principles governing DA load growth, as set forth in Appendix 1 of this order, provide a reasonable resolution of issues relating to the petitions for modification and warrant adoption.

10. Incremental load growth at existing DA accounts attributable to "add-on" commitments for new DA load executed by contract after September 20, 2001, would violate the DA suspension rules adopted in D.02-03-055.

11. A Rule 22 Working Group Meeting should be scheduled to develop an affidavit process whereby DA customers beyond 50 kw load must attest that they have not exceeded contractual limits.

12. SDG&E's proposed growth trigger of 15% should be adopted as an interim measure to guard against unforeseen growth of DA load.

13. DA suspension rules are expected to be observed. In the interests of protecting bundled customers against the risk of cost shifting, however proactive measures should be adopted to address any possibility that DA customer's load could increase beyond the levels applicable under the Commission's suspension rules.

14. Notwithstanding prohibitions to the contrary, in order to capture the effects of any impermissible DA load growth beyond the authorized levels under contract as of September 20, 2001, such material growth in load levels should be examined and accounted for as part of the Commission's periodic assessment of the DA CRS cap and cost responsibility undercollection.

15. Incremental DA load growth identified as being in excess of permissible volumes under the Commission's suspension rules should be treated as incremental load subject to an assessment of DWR cost responsibility in performing the DA-in/DA-out indifference cost calculations.

16. Subject to establishment of appropriate materiality thresholds, the burden of proof shall be on any DA customer asserting that any such material growth in its DA load volumes "beyond normal load fluctuations" that exceed September 20, 2001 levels are authorized under contracts in effect on or before the suspension date. Meeting the burden of proof entails the production of pertinent load-related contract documentation (subject to appropriate confidentiality protections) through signed affidavit of a responsible

representative under penalty of perjury, and submitting to possible spot audits as ordered below.

17. In determining any adjustment to the DA cost responsibility obligation for the effects of load growth beyond permissible suspension limits, it is reasonable to apply an appropriate materiality threshold to consider only DA accounts whose load demand is large enough to make a significant difference with respect to bundled customer indifference.

18. The determination of an appropriate materiality threshold for purposes of applying the measures adopted in this order regarding measures to enforce compliance with DA suspension rules should be addressed in Commission's next periodic review of the DA CRS cap.

19. The DA CRS cap should be adjusted as part of the DA CRS periodic review process, to the extent necessary to recognize the effects of DA load growth in excess of authorized suspension limits and to maintain the Commission's goal of achieving full DA CRS payback no later than the end of the DWR contract term.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Rule 6 in Decision (D.) 03-04-057 filed by SBC Services, University of California/California State University, and California Large Energy Consumers Association (CLECA) (Joint Petitioners) is hereby denied.

2. The following typographical correction is hereby made to Conclusion of Law 8 of D.03-04-057, inserting the word "not":

> "The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are **not** intended to prohibit load changes associated with normal usage, variations for accounts at other locations that are eligible for DA as of September 20, 2001." (Correction in bold face.)

3. The Petition to clarify D.02-03-055 filed by Southern California Edison is hereby denied.

4. The modifications to the Commission's standstill policy proposed jointly by Pacific Gas & Electric Company and San Diego Gas & Electric Company are not adopted.

5. The principles governing DA load growth, as set forth in Appendix 1 of this order, are hereby adopted.

6. The assigned ALJ is directed to schedule a Rule 22 Working Group Meeting to develop an appropriate affidavit process to implement Principle 3.

7. Comments shall be filed 15 business day after the effective date of this order to develop the record on the issues outlined above regarding a process to distinguish or delineate "normal load fluctuations" from load growth in excess of permissible Direct Access suspension limits, and means by which to recognize, measure, and bill such excess load on a bundled service basis. Reply comments shall be due 10 business days thereafter.

8. As part of the next periodic review of DA CRS cap levels pursuant to D.03-07-030, we hereby require that increases in DA load volumes shall be examined (subject to a reasonable materiality threshold on DA account size) to ascertain if any have occurred that exceed the authorized amounts under contract as of September 20, 2001, taking into account, as appropriate, "normal load fluctuations," as allowed under the standstill principle.

9. In conjunction with the review process, the ALJ shall provide opportunity for parties to comment on appropriate processes for identifying an appropriate materiality threshold for each utility for purposes of evaluating excess DA load, if any, subject to "normal load fluctuations."

10. To the extent that any DA customer asserts that any DA load growth beyond September 20, 2001 levels, identified as material in nature, and beyond "normal load fluctuations" is attributable to authorized load volumes under contracts in effect prior to the DA suspension date, that customer shall bear the burden of proof for such assertions. To meet its burden of proof, such DA customer must provide the utility with pertinent load-related excerpts from its contracts (subject to appropriate confidentiality provisions) through a sworn affidavit of a responsible representative under penalty of perjury to demonstrate that the claimed volumes were, in fact, covered under pre-suspension contracts. (Price-related contract information is not required to be produced.)

11. The Commission may conduct spot audits or informal investigative inquiry, as deemed necessary, to deal with any potential disputes concerning the accuracy of claims concerning contractual volumes pursuant to the review process outlined in this order.

12. To the extent that it is found that any such excess load volumes beyond permissible limits under the Commission's standstill principles are receiving DA billing treatment, an appropriate adjustment shall be required, either to the DA CRS cap or to the cost responsibility undercollection accrual, as necessary to account for such excess DA load and to maintain bundled customer indifference consistent with the principles adopted in D 02-03-055 and related orders.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

ADOPTED PRINCIPLES GOVERNING DIRECT ACCESS LOAD GROWTH

1. Load growth is permitted on existing non-continuous DA accounts provided that the load growth does not result in customer's total load exceeding the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions.
2. Utilities are not required to review, monitor, interpret or make recommendations regarding ESP/customer DA contracts.
3. An affidavit process will be developed to provide verification of the contracted amount of DA load.
4. The Commission's determination in the DA suspension decisions prohibiting *new* contracts and arrangements for DA service, and add-ons of new load after September 20, 2001 remains in effect.
5. The utilities should not be permitted to require customers to "split" existing DA accounts into a pre-DA suspension load portion (entitled to DA rates) and a post-DA suspension load growth portion (which would be required to pay bundled service charges). Thus no second meter or split billing should be required on eligible DA accounts. The customer and the utility could, however, by mutual agreement, install a second meter to split existing DA accounts between DA and bundled service.
6. DA load growth should not cause significant cost-shifting to bundled service customers.
7. To allow some degree of flexibility for customers, but to ensure that non-continuous DA load growth does not place a burden on bundled customers, a growth trigger of 15% is established for total non-continuous DA load growth. If, based on the utilities' monthly DA activity reports submitted to the Commission, aggregate DA load increases within a given utilities' service territory more than 15% above DA levels in

existence as of the date of this order, a party may file with the Commission requesting review of the growth trigger and reevaluation of the DA CRS accrual rate.[1] Otherwise, the DA CRS and cap will occur in the regularly scheduled DA CRS proceedings. In the event that the trigger is exceeded in between regularly scheduled DA CRS proceedings, the utilities or the Commission may initiate earlier review.

8. Any future DA CRS adjusted for DA load growth would apply to all billable non-exempt DA load, not just the incremental DA load above the pre-suspension levels.

9. Continuous DA accounts (*i.e.,* exempt from DA CRS) should continue to be exempt from DWR components of DA CRS for all load on the accounts.

10. With respect to relocations and replacements of DA accounts addressed in Decision 04-02-024, such replacements and relocations shall be permitted as long as the customer's total DA load after a replacement or relocation does not exceed the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions.[2]

---

[1] Because the Energy Division publicly reports DA load data only on a statewide basis the Energy Division shall independently determine whether DA load growth in any specific utility service territory exceeds 15%. If utility-specific trigger, the Energy Division shall so notify the Commission.

[2] We adopt proposed Alternative A of Principle 10. We decline to adopt Alternative 10 B which proposed: With respect to relocations and replacements of DA accounts addressed in Decision (D.) 04- 02-024, such replacements and relocations shall be permitted so long as (i) the customer closes its old account and (ii) the customer's total non-continuous DA load as of the relocation or replacement does not exceed the actual level of load on all existing DA and DA eligible accounts (i.e., accounts on the November 1, 2001 ESP lists) consistent with D.04-02-024 (*i.e.* D.04-02-024 permitted new DA accounts to be added "as long as there is no net increase [in load] across all eligible DA accounts.") (Decision at p.11.)